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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000430 01/29/2010

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

SKYRANCH FLIGHT ASSOCIATION JAMES R NEARHOOD

v.

MARICOPA COUNTY JERRY A FRIES

MINUTE ENTRY

On November 30, 2009, this matter came before the Court for oral argument on Plaintiff's Motion for Partial Summary Judgment and Maricopa County's Cross-Motion for Partial Summary Judgment. Following oral argument, the Court took the pending motions under advisement.

Plaintiff seeks a determination for valuation purposes that the SkyRanch Airport is a common area under A.R.S. § 42-13402. Defendant, Maricopa County (hereinafter "the County") seeks a determination that SkyRanch Airport does not qualify as a common area under A.R.S. § 42-13402. The Court finds that there are no disputes as to any material facts and, therefore, partial summary judgment, as to Count One of the Complaint, is appropriate.

Upon consideration, the Court finds that the County's interpretation of the relevant statutes is more persuasive. Plaintiff's interpretation creates disharmony among the statutory provisions. As explained in more detail below, the Court adopts the County's interpretation of A.R.S. § 42-13402.

Before addressing the areas in which the Court agrees with the County, the Court must first dispense with one point on which the Court finds the Plaintiff's argument more persuasive.

A.R.S. § 42-13402(C) provides a list of requirements to qualify as a common area. Maricopa County argues that because SkyRanch Flight Association does not qualify under A.R.S. § 42-13402(C)(1), which requires that the property "must be owned by a nonprofit homeowners' association, community association or corporation," they fail to satisfy any of the § 42-13402(C) requirements. The County interprets *nonprofit homeowners'* to modify "association," "community association," and "corporation." When statutory language is susceptible to different interpretations, the court should adopt the interpretation most harmonious with the statutory scheme and legislative purpose. State v. Pinto, 179 Ariz. 593 (App 1994). See Also Arizona Newspapers Ass'n, Inc. v. Superior Court, 143 Ariz. 560, 694 P.2d 1174 (1985) ("To find legislative intent, we consider the context of the statute, the language used, the subject matter, the historical background, the effects and consequences, and the spirit and purpose of the law"). When read against A.R.S. § 42-13404, which lists "the subdivider of a residential subdivision . . . or the community or homeowner's association," it appears that in the statutory scheme, a "community association" is different than a "homeowner's association," and therefore "homeowners" only applies to the first use of the word association, and not to "community association" or "corporation."[1] The County urges that SkyRanch Flight Association is not a "community association," while Plaintiff argues it is. See Plaintiff's Response at page 9, line 24; Defendant's Reply at page 7, line 2. The statutes do not define "community association," and while the definition may require some connection with a residential subdivision as Maricopa County would suggest, the Court need not determine whether SkyRanch Flight Association is a community association or a non-profit corporation. It qualifies under A.R.S. § 42-13402(C) as one or the other.

The County further argues that §§ 42-13404(B) & (D) preclude SkyRanch Airport from receiving a common area valuation. The parties disagree about the role and interpretation of § 42-13402(B), which reads: "In general, common areas consist of improved or unimproved real property that is intended for the use of owners and residents of a residential subdivision or development and invited guests of the owners or residents and include common beautification areas and common areas used as an airport." Thus, a common area must, "in general," be intended for the use of owners and residents of a residential subdivision or development. "In general" here means "for the most part," and describes what intended uses usually qualify a property as a common area. *Sun City Grand Community Assn. v. Maricopa County*, 216 Ariz. 173, 176-77 ¶ 13 (App. 2007). While *Sun City Grand* does not entirely foreclose a broad reading that, in a case outside the general run, a parcel might qualify as a common area even if it is not at all intended for the use of owners and residents of a residential subdivision or development, neither party argues for such an expansive scope. Rather, the parties debate the referent of the

[1] The Court takes a different view of the word "nonprofit," which the Court agrees with the County is intended to modify "homeowner's association," "community association," and "corporation." This conclusion, however, is of no import because the SkyRanch Flight Association is a nonprofit organization, and therefore, qualifies whether the word "nonprofit" modifies all three types of organizations or only the first – "homeowner's association."

adjective "residential." (Their discussion of "or," while interesting in its own way, is of little value in construing the grammar of the relevant sentence. Of course the statute is in the disjunctive; the real issue presented is to identify the two objects it disjoins.) The Flight Association reads the clause as "{residential subdivision} or development," meaning that a common area must serve owners and residents of a residential subdivision or of *a* development, while the County reads it as "residential {subdivision or development}," meaning that it serves owners and residents of a residential subdivision or of *a residential* development. Neither interpretation can be excluded by reference to the clause alone. However, the preceding "owners and residents" is instructive. Properties in a residential subdivision or in a residential development have owners and residents; the owner may also be the resident, or he may lease the property to another resident. Properties in a non-residential development by definition have no residents, only owners. Thus, by the County's interpretation the clause can be taken to read "owners and residents of a residential subdivision or owners and residents of a residential development," while the Flight Association's interpretation would read "owners and residents of a residential subdivision or owners (but not residents) of a non-residential development." (The clumsiness of these formulations may suggest why the legislature did not employ one, notwithstanding their optimal clarity.) The use of the conjunctive "and" in "owners and residents" suggests that the legislature intended as a qualification for common area status that both owners and residents be intended users of it, whether the property is a subdivision or a development. This is possible under the County's interpretation, but a logical absurdity under the Flight Association's.

More helpful than this grammatical exegesis is subsection D of the same statute: "For purposes of this section, 'airport' means runways and taxiways that are used primarily by residents of the residential subdivision but that may be designated as a reliever airport by the federal aviation administration and that receives no public funding." *Sun City Grand*, *supra* at 177 ¶ 15, cited this subsection as an example of the legislature expressly requiring actual or current use to qualify as a common area, in contrast to the remainder of subsection B, which requires only use intended "in general;" while, strictly speaking, this observation, otherwise irrelevant to the appellate court's analysis, is dictum, it is indicative of how the court is likely to rule. It also makes sense. Moreover, "use by residents of a residential subdivision" is completely contained in "use by owners and residents of a residential subdivision or development," regardless of whether the adjective modifies one noun or both. Thus, if the Flight Association is correct, every airport qualifying for common area valuation under subsection D would also qualify under the broader subsection B definition, making subsection D redundant. Such an interpretation is strongly disfavored. "Each word, phrase, clause, and sentence of a statute must be given meaning so that no part will be void, inert, redundant, or trivial." *Williams v. Thude*, 188 Ariz. 257, 259 (1997). The Court must, therefore, seek an interpretation that gives independent force to subsection D. In so doing, the Court concludes that an airport can be classified as a common area only if it satisfies the requirement of subsection D that it be used

primarily by residents of a residential subdivision, as well as the requirements of subsection C; use by owners of a development, residential or not, does not qualify the airport for common area valuation. (In addition, the fuel island does not qualify as a common area because it is not a runway or a taxiway.)

Applying this analysis to the facts, the Flight Association concedes that its membership, the people entitled to use the SkyRanch Airport, consists primarily of non-residents of the adjacent residential subdivision (120 non-residents versus only 20 residents). By no stretch can one-seventh of the membership be considered the "primary users" of the airport. Therefore, the airport is not entitled to taxation as a common area under A.R.S. § 42-13402.

Although not given as much attention in the briefing, the airport's fuel island does not qualify as a common area because it is not a "runway" or "taxiway" as set forth in subsection D, and therefore, is not part of the "airport" for purposes of subsection B. Further, like the airport itself, the fuel island is not intended for the use of owners and residents of a residential subdivision or residential development, as it is frequently used by both non-residential owners and transient fliers.

For the foregoing reasons,

IT IS HEREBY ORDERED denying Plaintiff's Motion for Partial Summary Judgment.

IT IS FURTHER ORDERED granting Plaintiff's Cross-Motion for Partial Summary Judgment as to Count One of the underlying Complaint.